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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,277	03/01/2002	Steven Allen Toelke	128951	5185

7590 07/17/2003

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EXAMINER

STEFANON, JUSTIN

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 07/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/087,277

Applicant(s)

TOELKE ET AL.

Examiner

Justin Stefanon

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-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003 .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 22-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 22-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____ .

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5, 22-26, 30-33, and 37 are rejected under 35 U.S.C. 103(a) as being anticipated by US Pat. No. 6,151,986 to Willemsen et al.

Willemsen et al disclose, in Figure 10, an adjustable control pedal with a pivotable upper arm 18', with first and second guide slots 86,68 and a drive slot 30, all straight, a lower arm 10" carrying a pedal 20, a first pin 58 and second pin 16, one in each guide slot, a screw 146 carried by a mounting bracket 60, a nut 34 secured to the lower arm, laterally extending through the drive slot to the screw, and a motor 160 to rotate the screw. However, the guide slot 86 is not formed in the upper arm as disclosed in Willemsen. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the slot in the upper arm and the pin in the lower arm, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

The weight of the lower arm is supported by the upper arm through the pins. The upper arm pivots about an axis at a fixed position relative to the upper arm, spaced

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apart from the inclined drive slot. The first and second slots extend entirely through the upper arm, and the pins through the slots.

4. Claims 1-5, 26-29, 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,875,385 to Sitrin in view of Willemsen et al.

Sitrin discloses an adjustable control pedal with a pivotable upper arm 36, with first and second guide slots 36g, 36f and a drive slot 36e, a lower arm carrying a pedal 44, a first pin 38e and second pin 38h, one in each guide slot, a screw 46 carried by a mounting bracket 34c, a nut 52 secured to the upper arm, laterally extending through the drive slot to the screw, and a motor 48 to rotate the screw. The guide slots are formed on opposite sides of the drive slot. Sitrin discloses the use of nonparallel guide slots in Figure 1. The guide slots of both embodiments are straight and inclined. The weight of the lower arm is supported by the upper arm through the pins.

Sitrin discloses the claimed invention in the embodiment of Figure 3 except for the drive slot being straight. Willemsen et al. disclose an adjustable pedal with guide slots and a drive slot, all straight. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pedal of Sitrin with a straight guide slot, as taught by Willemsen et al. as a means of altering the range of adjustability of the pedal location and the mechanical advantage of the pedal.

Response to Arguments

5. Applicant's arguments, see page 2, paragraph 3, filed July 3, 2003, with respect to pin 16 and slot 86 of Willemsen et al. have been fully considered and are persuasive. The rejection under 35 USC 102(e) of claims 1, 5, 22 to 26, 30 to 33, and 37 has been

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withdrawn. However, upon further consideration, a new ground of rejection is made in view of a new interpretation of the prior art reference.


Applicant's arguments with respect to the rejection under 35 USC 103(a) have been fully considered but they are not persuasive. The pedal of Sitrin would not be rendered inoperable by straightening the drive slot. Such a modification would merely alter the mechanical advantage of the pedal, which would provide a benefit for smaller vehicle operators.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin Stefanon whose telephone number is 703-305-1945. The examiner can normally be reached on Monday - Friday 6 - 3:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on 703-308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

js
July 15, 2003


DAVID A. BUCCI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600